

STATE OF MICHIGAN
COURT OF APPEALS

CALVIN ANDERSON,

Plaintiff-Appellant,

v

MIKE HERZOG and KIM HERZOG, d/b/a
NIKKI'S DINER,

Defendants-Appellees.

UNPUBLISHED
February 25, 2003

No. 238081
Ionia Circuit Court
LC No. 00-020689-NO

Before: Kelly, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff caught his toe on a step and fell while leaving defendants' diner. The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(10), finding that the hazard was open and obvious.

In general, a possessor of land owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty does not encompass the removal of open and obvious dangers. *Id.* If special aspects of a condition make even an open and obvious risk unreasonably dangerous, the possessor has a duty to undertake reasonable precautions to protect invitees from that risk. *Id.*, 517. The critical question is whether there is evidence that creates a genuine issue of material fact regarding whether there are truly special aspects of the open and obvious condition that create an unreasonable risk of harm. *Id.*

Plaintiff failed to present any evidence of any special aspects of the condition of the steps that would create an unreasonable risk of harm. In response to the summary disposition motion, he asserted that the steps were uneven, the handrail was too short, and that the covering was loose. Only the last condition was consistent with his injury claim. Plaintiff did not present any evidence to support his bare assertion that the carpeting was defective. Plaintiff failed to meet his burden of presenting evidence to raise a genuine issue of material fact, and the trial court

properly granted summary disposition. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra